

June 14, 2001

**HAND DELIVERY**

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, Second Floor  
Boston, MA 02110

**Re: Competitive Market Issues**

Dear Secretary Cottrell:

The New Power Company ("New Power"), a licensed competitive supplier in Massachusetts, appreciates the opportunity to present these written comments to the Department of Telecommunications and Energy ("Department" or "DTE") regarding competitive market issues. New Power applauds the Department for examining market issues at this time. In light of recent increases in default service rates and the lack of available competitive alternatives for default service customers, the time is right for the Department to determine just what can be done to allow customers in Massachusetts to achieve the benefits promised by the 1997 Electric Restructuring Act.

As an initial matter, New Power would like to express its support generally for the comments filed today by the Competitive Suppliers. Because a truly competitive market will include a wide range of suppliers with different resources and objectives, New Power believes that it is particularly important for the Department to consider the views of a cross-section of suppliers before making any determinations regarding steps that should be taken to enhance competitive choice in the state. In that regard, it is New Power's view that the comments of the Competitive Suppliers aptly portray the long-term barriers (*i.e.*, standard offer pricing) and short-term barriers (*i.e.*, the difficulties associated with marketing default service customers such as third-party verification requirements) faced by suppliers considering entry into the Massachusetts market.

As a competitive supplier interested in entering the Massachusetts electricity market to serve residential and small commercial customers, New Power focuses its written comments on a number of important short-term market issues: access to customer information; alternative default service providers; internet enrollment and authorization for release of historic usage data; and internet-based data exchange. The ability of the Department to address these issues in a

timely manner will go a long way toward helping New Power determine whether it should begin to market to customers in Massachusetts.

## **Access to Customer Information**

At the May 31<sup>st</sup> technical conference, a number of competitive suppliers discussed the importance of accessing customers, and, in particular, obtaining lists of default service customers (Tr. 75). In a jurisdiction where the residential market comprises both standard offer service and default service customers, it is critical that suppliers have the capability to directly market to default service customers. The most effective way to market to default service customers is through the electronic provision of customer lists. From New Power's perspective, these lists, which should be updated on a quarterly basis, would need to include, among other things: customer name; customer service and mailing addresses; current rate classification; meter reading cycle; and most recent 12 months' usage information (including actual monthly kWh usage and actual demand in kW.)

This basic information is presently available to certified suppliers in the restructured electricity market in Ohio.<sup>1</sup> As is the case in Ohio, New Power believes it is appropriate for distribution companies to receive a cost-based fee for providing this information.

On May 22, 2000, National Grid filed its "Default Service Initiative" with the DTE, an initiative which includes a proposal to provide default service customer lists to competitive suppliers (see May 22, 2000 National Grid letter, Attachment 1). Under the National Grid initiative, Massachusetts Electric Company ("MECo") would provide competitive suppliers with the names and addresses of non-residential default service customers (Tr. 20-22). New Power believes that National Grid's customer list proposal provides a framework for allowing suppliers to access default service customers and effectively.<sup>2</sup> However, New Power sees no reason why MECo cannot provide residential customer lists as well as non-residential customer lists. As long as MECo and other distribution companies limit these customer lists to non-residential classes, there is little hope of providing the benefits of competition to the large numbers of residential customers presently seeking competitive alternatives.

New Power also believes that it is important to provide competitive suppliers with customer information that extends beyond customer name and address. An electronic customer list which provides information similar to that which is provided in Ohio would be instrumental in removing unnecessary barriers to marketing default service customers in Massachusetts. While New Power understands that some customers may be interested in not disclosing certain information to suppliers, distribution companies could offer customers the affirmative option of removing information from a customer list. By allowing customers this option -- an approach

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<sup>1</sup> The full list of customer information provided to suppliers in Ohio can be found on Cinergy website at [http://www.cinergycge.com/about\\_cinergy\\_corp/cge\\_customer\\_choice/Certified\\_Suppliers/Chapter04.asp](http://www.cinergycge.com/about_cinergy_corp/cge_customer_choice/Certified_Suppliers/Chapter04.asp).

<sup>2</sup> New Power notes that Attachment 1 of National Grid's Default Service Initiative includes a number of other elements. At this point, New Power provides comments only with respect to the Default Service Customer Lists proposal.

which also is employed in Ohio -- the Department could strike an appropriate balance between providing suppliers with the information necessary to market effectively and allowing certain customers to withhold customer information.

Finally, New Power encourages the Department to require all distribution companies to adopt the same requirements for providing customer lists to competitive suppliers, especially with regard to the type of information included on customer lists.

### **Alternative Default Service Providers**

In Attachment 2 to its Default Service Initiative, National Grid lists certain “Additional Concepts for Discussion”, including the possibility that “an alternative entity assume full Default Service responsibility.” While National Grid does not presently propose to implement any discussion items listed on its Attachment 2, New Power believes it is quite important for the DTE to soon establish standards for allowing distribution companies to reach agreements by which all or a portion of default service load can be transferred to a competitive supplier.

As the Department is aware, G.L. c. 164, § 1B(d) states that “[T]he department may authorize an alternate generation company or supplier to provide default service, as described herein, if such alternate service is in the public interest.” In enacting this particular statutory provision, the Legislature understood that the public interest might be served in some instances by allowing an entity other than a distribution company to serve default service customers. Among other things, allowing an alternative default service provider or providers would (1) ensure that default service customers continue to receive reliable electricity service; and (2) afford competitive suppliers the benefits associated with “branding”.

New Power urges the Department to establish standards that encourage distribution companies and competitive suppliers to develop alternative default service agreements in the public interest.

### **Internet Enrollment and Authorization for Release of Historic Usage Data**

Although recently enacted federal legislation prohibits Massachusetts from preventing the use of an electronic signature for the purposes of effecting a business transaction, provisions in the 1997 Electric Restructuring Act which require written authorization by a customer (1) before competitive electricity service can be initiated, and (2) before historic usage data can be released, continue to cast a cloud over the retail electricity market in Massachusetts. It is imperative that the Department clarify that internet enrollment of customers and release of historical usage data are allowed in Massachusetts without the requirement of a wet signature by virtue of recently enacted federal legislation.

On October 1, 2000, the *Electronic Signatures in Global and National Commerce Act* (hereafter, “E-SIGN Act”).<sup>3,4</sup> The E-SIGN Act is designed to implement a national uniform

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<sup>3</sup> Public Law No. 106-229.  
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standard for all electronic transactions that encourages the use of electronic signatures, electronic contracts and electronic records by providing legal certainty for these instruments when signatories comply with its standards.

Section 101 (a) of the E-SIGN Act provides a clear statement of its intended scope as follows:

- “(a) In General – Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction on or affecting interstate or foreign commerce-
- (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
  - (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.”

Section 101 (b) of the E-SIGN Act deals directly with the issue of whether state laws and regulations can be interpreted as a bar to the use of electronic means in evidencing the required “affirmative choice”. That provision states:

- “(b) This title does not-
- (1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law ***other than a requirement that contracts or other records be written, signed, or in nonelectronic form.***” (emphasis added)

The E-SIGN Act clearly covers the situations at issue in regard to the interpretation of the signature obligation contained in 220 CMR 11.05(4)(c), as well as the continued applicability of the statutory and regulatory requirements for written confirmations contained in G.L. c. 164, § 1F and 220 CMR 11.05(4)(d). With the passage of the E-SIGN Act, any pre-existing impediment to the use of electronic signatures or the use of documents in electronic form ceased on the effective date of the act.

Importantly, the E-SIGN Act provides a mechanism to be employed if a statute or regulation requires that covered information<sup>5</sup> be made available to a consumer in writing, such as the requirement in 220 CMR 11.05(4)(d) that service cannot commence until three days

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<sup>4</sup> Record retention provisions of the E-SIGN Act become effective on March 1, 2001 and June 1, 2001.

<sup>5</sup> The E-SIGN Act covers all information relating to a transaction in or affecting interstate or foreign commerce. The transactions at issue in G.L. c. 164 are in interstate and/or foreign commerce or affect such commerce.

following the customer's receipt of a written confirmation of the agreement to purchase electricity from a competitive supplier. Section 101(c) provides that the required information may be communicated by electronic record as long as the consumer has affirmatively consented to the use of electronic means and the consumer is informed of his/her right to receive the information on paper or in other nonelectronic form. This provision appears to vitiate the absolute requirement of a written confirmation of an agreement to receive power from a competitive supplier and suggests that, if a consumer is willing, the required confirmation could be provided electronically on the Internet.

On September 25, 2000, Jacob J. Lew, Director of the United States Office of Management and Budget, issued a memorandum to the heads of all federal agencies and departments. Director Lew made the following observation about the new law:

Under E-SIGN, companies can contract online to buy and sell a broad array of products and services. Businesses can use servers the size of a laptop to collect and store transaction records that once filled up vast warehouses. Consumers can buy insurance, get a mortgage, or open a brokerage account on-line, without waiting for physical documents to be mailed back and forth. E-SIGN will offer improved efficiencies in U.S. Markets; this historic legislation will help to bring the full benefits of electronic commerce to our economy.

New Power's analysis of the provisions of the E-SIGN Act indicates that state law notwithstanding, there presently exists no bar to the use of the Internet and other electronic transmittal methods in the enrollment of customers by competitive suppliers or the release of historical usage data. New Power believes that acknowledgment by the Department of the E-SIGN Act and its clear application to electricity transactions in Massachusetts would go a long way toward removing a significant entry barrier for competitive suppliers.

### **Internet-based Data Exchange**

Finally, New Power encourages the Department to adopt an internet-based data exchange system. An internet-based infrastructure helps lower suppliers' costs and is far more efficient for all parties involved. Distribution companies presently use the VAN system which is more complicated and time consuming than internet exchange. Moreover, competitive suppliers are charged for each VAN-based transaction, costs which are not incurred with an internet-based system.

### **Conclusion**

In closing, New Power wishes to thank the Department for affording it the opportunity to provide the Department with its assessment of the most significant short-term barriers to competition in the Massachusetts electricity market. In developing these comments, New Power has tried to focus on a short list of measures which, if adopted, should improve the climate for electricity competition. New Power looks forward to discussing these issues with the DTE and

other stakeholders as the Department moves forward with its plans to remove barriers to competition in the state.

Respectfully submitted,

Becky Merola  
Director, Government Affairs

cc: James Connelly, Chairman  
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